

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

MOMENTIVE PERFORMANCE MATERIALS, INC.

and

**Cases 3-CA-27005
3-CA-27125
3-CA-27157
3-CA-27402**

IUE-CWA, Local 81359

**ORDER CONSOLIDATING CASES,
CONSOLIDATED COMPLAINT AND
NOTICE OF HEARING**

IUE-CWA, Local 81359, herein called the Local Union, has charged in Cases 3-CA-27005, 3-CA-27125, 3-CA-27157 and 3-CA-27402 that Momentive Performance Materials, Inc., herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151 et seq., herein called the Act. Based thereon, and in order to avoid unnecessary costs or delays, the General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, ORDERS that these cases are consolidated.

I

(a) The original charge in Case 3-CA-27005 was filed by the Local Union on January 27, 2009, and a copy was served by regular mail on Respondent on the same date.

(b) The first amended charge in Case 3-CA-27005 was filed by the Local Union on February 18, 2009, and a copy was served by regular mail on Respondent on the same date.

(c) The second amended charge in Case 3-CA-27005 was filed by the Local Union on March 2, 2009, and a copy was served by regular mail on Respondent on the same date.

(d) The third amended charge in Case 3-CA-27005 was filed by the Local Union on December 8, 2009, and a copy was served by regular mail on Respondent on the same date.

(e) The original charge in Case 3-CA-27125 was filed by the Local Union on April 17, 2009, and a copy was served by regular mail on Respondent on the same date.

(f) The amended charge in Case 3-CA-27125 was filed by the Local Union on May 26, 2009, and a copy was served by regular mail on Respondent on the same date.

(g) The original charge in Case 3-CA-27157 was filed by the Local Union on May 20, 2009, and a copy was served by regular mail on Respondent on the same date.

(h) The first amended charge in Case 3-CA-27157 was filed by the Local Union on May 26, 2009, and a copy was served by regular mail on Respondent on the same date.

(i) The second amended charge in Case 3-CA-27157 was filed by the Local Union on December 8, 2009, and a copy was served by regular mail on Respondent on the same date.

(j) The original charge in Case 3-CA-27402 was filed by the Local Union on November 2, 2009, and a copy was served by regular mail on Respondent on the same date.

(k) The amended charge in Case 3-CA-27402 was filed by the Local Union on December 9, 2009, and a copy was served by regular mail on Respondent on the same date.

II

(a) At all material times, Respondent, a corporation with a place of business located at 260 Hudson River Road in Waterford, New York, herein called Respondent's Waterford, New York facility, has been engaged in the production and sale of silicone products.

(b) During the past twelve months, Respondent, in conducting its business operations described above in paragraph II(a), purchased and received at its Waterford, New York facility goods and services valued in excess of \$50,000 directly from points located outside the State of New York.

III

At all material times, Respondent has been engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

IV

(a) At all material times, the Local Union has been a labor organization within the meaning of Section 2(5) of the Act.

(b) At all material times, IUE-CWA, The Industrial Division of the Communications Workers of America, herein called the International Union, has been a labor organization within the meaning of Section 2(5) of the Act.

V

(a) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

| | | |
|-------------------|---|---|
| Gene-Paul Vetter | - | Human Resources Manager-Production |
| Alex Greenberg | - | Silicones American Industrial Human Resources Officer |
| Edward Stratton | - | Human Resources Leader |
| Myron Spektor | - | Global Compensation and Benefits Manager |
| Patrick O'Donnell | - | America's Chief Operating Officer |
| Jonathan Rich | - | CEO/President |
| Cecilia Collins | - | Chemical Operations Manager |
| Joshua Spain | - | Finishing Operations Manager |
| Michael Foley | - | Supply Chain Manager |
| Michael Stalker | - | Chemical Operations Manager |
| Michael Piskula | - | Manager Buildings 37 and 24 |
| Richard Balboni | - | Operations Manager |
| David Haley | - | Operations Manager- waste water treatment |
| John Fish | - | Operations Manger-rubber |
| Chris Swift | - | Operations Manager- MCS/FS/TCS |
| Robert Hennessy | - | Operations Manger-MECL/Siloxane |
| Mark Sheehan | - | Supervisor-Fluids & Resins Department |

VI

All production and maintenance employees at Respondent's Waterford, New York facility referred to in the Preamble and in Article 1 ("Union Recognition") of the collective bargaining agreement referred to below in paragraph VII, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

VII

(a) At all material times, the Local Union and the International Union have been the designated joint exclusive bargaining representatives of the Unit at Respondent's Waterford, New York facility and have been recognized as the representative by Respondent. This recognition has been embodied in successive collective-bargaining agreements, including an agreement effective by its terms from June 18, 2007 through June 20, 2010, herein called the "National Agreement," and local supplements and letters of understanding ("Local Understandings") referred to at Article XXI of the National Agreement.

(b) At all material times, based on Section 9(a) of the Act, the Local Union and the International Union, herein collectively called the Union, have been the joint exclusive collective-bargaining representatives of the Unit.

VIII

(a) On or about January 12, 2009, the Respondent failed to continue in effect all the terms and conditions of the National Agreement referred to above in paragraph VII by changing the wage scale (2007-2010 Wage Agreement), wage rates (Article VI-Wage Rates) and wage-step progression (Article VI-Wage Rates) for employees in the Unit.

(b) On or about February 27, 2009, the Respondent failed to continue to give force and effect to Article V (Upgrading and Job Notification Procedure) of the Local Understandings, by issuing a "Policy For Filling Posted Positions," to employees in the Unit.

(c) On or about June 1, 2009, the Respondent unilaterally implemented changes to the overtime assignment procedure of the Article V of the Local

Understandings by issuing to employees in the Unit a “Covering Employee Absence Policy.”

(d) The subjects set forth above in paragraph VIII(a), (b) and (c) relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purpose of collective bargaining.

(e) Respondent engaged in the conduct described above in paragraph VIII(a), (b) and (c) without the Union’s consent.

IX

(a) On or about January 12, 2009, the Respondent implemented changes to job descriptions and job classifications for employees in the Unit.

(b) The subjects set forth above in paragraph IX(a) relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purpose of collective bargaining.

(c) Respondent engaged in the conduct described IX(a) without first bargaining with the Union to a good faith impasse.

X

(a) On or about January 12, 2009, the Respondent unilaterally implemented an “Hourly High Rate Policy,” for the employees in the Unit.

(b) The subject set forth above in paragraph X(a) relates to wages, hours and other terms and conditions of employment of the Unit and is mandatory subject for the purpose of collective bargaining.

(c) Respondent engaged in the conduct described above in paragraph X(a) without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and/or the effects of this conduct.

XI

On or about February 20 and April 11, 2009, Respondent, by Mark Sheehan, at the Waterford facility, bypassed the Union and dealt directly with its employees in the Unit by engaging in negotiations, concerning terms and conditions of employment including pay and term of assignment, for its employees to accept temporary work assignments.

XII

By the acts and conduct described above in paragraphs VIII(a), (b), (c) and (e), Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act and in violation of Section 8(a)(1) and (5) of the Act.

XIII

By the conduct described above in paragraph IX(a) and (c), X(a) and (c), and XI, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

XIV

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs VIII, X, XII and XIII, the General Counsel seeks an Order requiring the Respondent to restore the wage scale, wage rate, wage-step progression, job descriptions, job classifications and practices regarding filling posted positions, hourly high rates and covering employee absences as they existed prior to the changes alleged above and

further seeks an Order requiring that the Respondent pay interest on any back pay or other monetary awards on a compounded, quarterly basis.

The General Counsel further seeks an order requiring Respondent to:

Preserve and, within 14 days of a request, provide at the office designated by the Board or its agents, a copy of all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **April 5, 2010 at 1:00 p.m. at the National Labor Relations Board, Leo W. O'Brien Federal Building, Room 342, Albany, New York 12207**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.


ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the (consolidated) complaint. The answer must be **received by this office on or before February 4, 2010 or postmarked on or before February 3, 2010.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on the **E-Gov tab**, select **E-Filing**, and then follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the consolidated complaint are true.

DATED at Buffalo, New York, this 21st day of January, 2010


RHONDA P. LEY, Regional Director
National Labor Relations Board
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Niagara Center Building
130 S. Elmwood Avenue, Suite 630
Buffalo, New York 14202

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

MOMENTIVE PERFORMANCE MATERIALS, INC.

and

**Cases 3-CA-27005
3-CA-27125
3-CA-27157
3-CA-27402**

IUE-CWA, Local 81359

**ORDER APPROVING REQUEST FOR WITHDRAWAL
OF CHARGE AND ORDER DISMISSING COMPLAINT
AND NOTICE OF HEARING**


The Regional Director of the National Labor Relations Board, Third Region,
issued a Consolidated Complaint and Notice of Hearing in the above-entitled matters on
January 21, 2010.

On June 30, 2010, the Charging Party requested withdrawal of its charges, based
upon a non-Board resolution by the parties.

IT IS HEREBY ORDERED that the request to withdraw the charges is
approved.

IT IS HEREBY FURTHER ORDERED that the Consolidated Complaint and
Notice of Hearing is dismissed.

DATED at Buffalo, New York this 1st day of July, 2010


RHONDA P. LEY, Regional Director
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